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Attorney Docket No. 0132

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of :

Doc's Deer Farm & Scents

Serial No. : 09/524,928

Group Art Unit : 1615

Filed : 3/14/00

Examiner : Ware, T.

For : **SELECTED MIXTURE FOR ANIMAL LURE**

AFFIDAVIT UNDER 37 C.F.R. 1.132

The Honorable Commissioner
For Patents and Trademarks
Washington, D.C. 20231

Dear Sir :

The Undersigned, Keith Ainsley, hereby declares as follows :

That he is the sole inventor of all material described and claimed in the subject patent application.

That he has spent the last 30 years engaging extensively in hunting and other outdoor endeavors,

That he has spent the last eight years raising White Tail Deer.

That he is the owner of the business entity known as "Doc's Deer

Farm & Scents", managing one of the largest and most sophisticated deer urine collection/producing facilities in North America.

That for the last five years he has been carrying out seminars and discussion groups covering such topics as deer scents, proper scent usage and proper scent selection, has served as a qualified expert in numerous outdoor feature articles and publications on the subject of urines/scents and the proper use of such products, has served as a consultant to several national deer feed and pellet companies, and has served as an advisor to numerous other deer farms on quality of nutrition and other health concerns.

That as a result of his extensive studies and those of others, it is his professional opinion that the deer family, which includes: all types of deer; moose; caribou; elk; and the like, have basically the same scent and communication behaviors. All members of this family use the same types of rubs, scrapes, or wallows indicating that an animal is in the area. These scrapes act as sign posts indicating either invitation or warning to other animals of the particular species. This is accepted as common knowledge among those dealing extensively and having expertise with such animals.

That all male animals of the deer family exhibit the same characteristics when in heat, and follow the same pattern of trying to isolate a single female in

estrus to carry out mating activities. Animals in the deer family do not mate in groups. Rather, during the short annual breeding period males will constantly chase females to isolate one, breeding with that one, and then searching for others to isolate and breed with. This is accepted as common knowledge among those dealing extensively and having expertise with the deer family.

That female deer, including those in estrus travel in relatively large groups of three and most often more, and that under no circumstances has the

Undersigned ever witnesses or heard of only two does in estrus traveling together and using the same scrape. The use of the same scrape by two does in estrus does not occur in nature due to a large number of factors pertaining to the mating habits of animals in the deer family. This is considered common knowledge among those dealing extensively and having expertise with the deer family.

That based upon this knowledge, the Undersigned proposed an experiment to determine the effects of urine from only two does in estrus, a situation not known to occur in nature.

That during the months of September-December of both 1999 and 2000, the Undersigned supervised two sets of tests, carried out in four different test settings, using the assistance of Joe Rosco, Mark Rosco, Dr. Mike Bell, and Thomas Carr, according to the following protocols :

1. The tests were carried out in four different test plots, each in a different setting, where the settings included :

- (a) An urban setting of approximately 1/2 to 1 acre drawing a test area of approximately 500 acres located just outside of the city limits, and containing sufficient lawn area and lightly wooded area to support deer.
- (b) Urban park setting of approximately 1/2 and 1 acre, drawing on a test area of approximately 300 acres, where the park is substantially within the city limits, forming a large contiguous area therein;
- (c) A suburban/rural setting where the test plot is approximately 1/2 to 1 acre and draws on a test area of approximately 100-150 acres, the setting being largely suburban with large lawns or open farmland with extensive tracks of wooded land; and,
- (d) A penned area approximately 1/2 to 1 acre, drawing upon a test area of approximately 5 acres in which the deer are considered "tame", having been raised in pens.

2. Observation times were split evenly among the four test plots, and occurred in two hour intervals of sunrise to two hours afterwards, noon to two in the afternoon, and two hours before sunset until sunset.

3. All observers as previously named in this Declaration were thoroughly

briefed on the necessary safeguards and protocols. All observers wore rubber boots, and both clothing and bodies specially treated with scent masking devices. All observers entered the test plots with the wind in the face of the observer and used a thoroughly camouflaged and de-scented blind as a observation post as indicated in the drawings denoted as Exhibit "A".

4. The mock scrapes as denoted in the drawings of Exhibit "A" were constituted by :
 - (a) Diluted tap water;
 - (b) Various types of single doe urine scents, taken only from does in estrus, harvested by Doc's Deer Farms to assure quality of content ;
 - (c) "Doc's Double Doe" formulation, taken from only two does in estrus, as described in the present patent application; and,
 - (d) Various formulations of urine from three or more does in estrus.

With the exception of group (a) the operative ingredient in each of the groups was urine from at least one doe in estrus. To the best knowledge to the Undersigned, the single-doe formulations were provided from urine harvested by Doc's Deer Farms to assure quality control. To the best knowledge of the Undersigned there are no additions made by the retailers who bottled the basic single doe urine provided by Doc's Deer Farms. As has been previously indicated

in the pending patent application, the Doc's "Double Doe" formulation contains only urine from only two does in estrus. Nothing else has been added. Doc's Deer Farms also harvested the urine used by the retailers of the formulations of group (d). Urine from at least one doe in estrus is the only operative ingredient in these formulations that can be used to attract a buck in ^{Rut} heat. To the best knowledge of the Undersigned, there is nothing besides deer urine from three or more does in estrus in the formulations of category (d). However the Undersigned cannot state with absolute certainty that no fillers or preservatives or other now-operative ingredients have been added. The Undersigned asserts that all possible steps have been taken to strictly limit the comparison to formulations having only urine from does in heat as the operative ingredient.

5. The mock scrapes were refreshed on survey days (Monday, Wednesday and Saturday at the noon observance between 12:00 and 2:00) using approximately one eyedropper of formulation per mock scrape.

6. Each mock scrape was approximately 1 1/2 feet to 2 feet in diameter, configured to appear as if it had been created by the activities of deer.

7. The test sites were rotated once a week (Sundays between 12:00(noon) and 2:00 p.m.), according to the following protocol :

(a) the entirety of each mock scrape was dug up to a depth of

approximately one foot and removed in its entirety;

- (b) the new mock scrape with it's new material was placed no closer than 10 feet from the spot of the old mock scrape;
- (c) the same amount of liquid formula was placed for the new mock scrape as applied to the previous mock scrape at each of the test sites for each all of the test plots, as depicted in the drawings of Exhibit "A"; and,
- (d) where possible each of the test sites was placed under trees or overhanging branches so to be as favorable to deer.

That in 1999 fifty tests (observed bucks) were conducted with the following results :

- (a) 46 of 50 observed bucks ignored other scrapes, often walking past them to use the mock scrape containing the "Doc's Double Doe" formulation as described and claimed in the present patent application, where such use constituted urinating, defecating, pawing & digging or waiting at the mock scrape; and,
- (b) 4 of the bucks were unable to get to the mock scrape containing the "Doc's Double Doe" formula due to fighting or being forced out of the area by

other bucks.

It was noted that most of 46 bucks observed preferred the mock scrape with the "Doc's Double Doe" formulation and paid little if any attention to neighboring mock scrapes using the other specified formulations.

That in the year 2000, one hundred tests (observed bucks) were conducted with the following results :

(a) 92 of the 100 bucks that were observed preferred the mock scrapes baited with "Doc's Double Doe" formulation of the present patent application. Of these 92 bucks all made full contact with the mock scrape baited with the "Doc's Double Doe" formulation, approaching from all directions without regard to wind direction, and often ignoring the other mock scrapes;

(b) 4 of the 100 bucks ran off after live does that were seen in the test area;

(c) 2 of the bucks started fighting and chased off other bucks; and,

(d) 2 of the bucks started towards the mock scrape baited with "Doc's Double Doe" formulation and walked off to start feeding.

That it was also observed that many of the does coming in contact with scrapes baited with "Doc's Double Doe" formulation exhibited calm behavior, a

phenomenon totally unheard of previous to the use of the "Doc's Double Doe" formulation of the present patent application.

That in other, informal tests where the formulation of the present patent application was not used, it was observed that single doe urine successfully attracted bucks less than 50% of the times for those bucks observed. Further, formulations of three or more doe attracted bucks less than 25% of the time for those bucks observed.

That in other informal tests conducted only with a penned herd of deer, and in which the formulation of the present patent application was not present, the following was observed :

- (a) 25-50 bucks made no attempt with the wind blowing directly to them, to approach the test area;
- (b) 13 of 50 bucks observed actually came to a full alert, showing every indication of detecting danger and fled after smelling the urine placed in the mock scrapes; and,
- (c) 12 of 50 bucks made very passive approaches to the mock scrapes and left the area quickly.

That based upon the aforementioned observations conducted under the described protocol, the Undersigned definitely concludes that 92% of the deer

observed showed a mark preference for the "Doc's Double Doe" formula of the present application over other commonly used deer lure formulations (single doe in estrus urine, and urine from three or more such animals in estrus).

The Undersigned acknowledges that willful false statements and the like are punishable by fines, or imprisonment, or both (18 U.S.C. 1001), and may jeopardize the validity of the application or any patent issuing thereon. The Undersigned asserts that all statements made are of the Undersigned's own knowledge are true and that all statements made upon other information and belief are believed to be true.

Respectfully submitted,

A handwritten signature consisting of the letters "K", "A", "I", "N", "S", "L", "E" followed by a small circle.

Keith Ainsley

Date : 9-23-02

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Exhibit A



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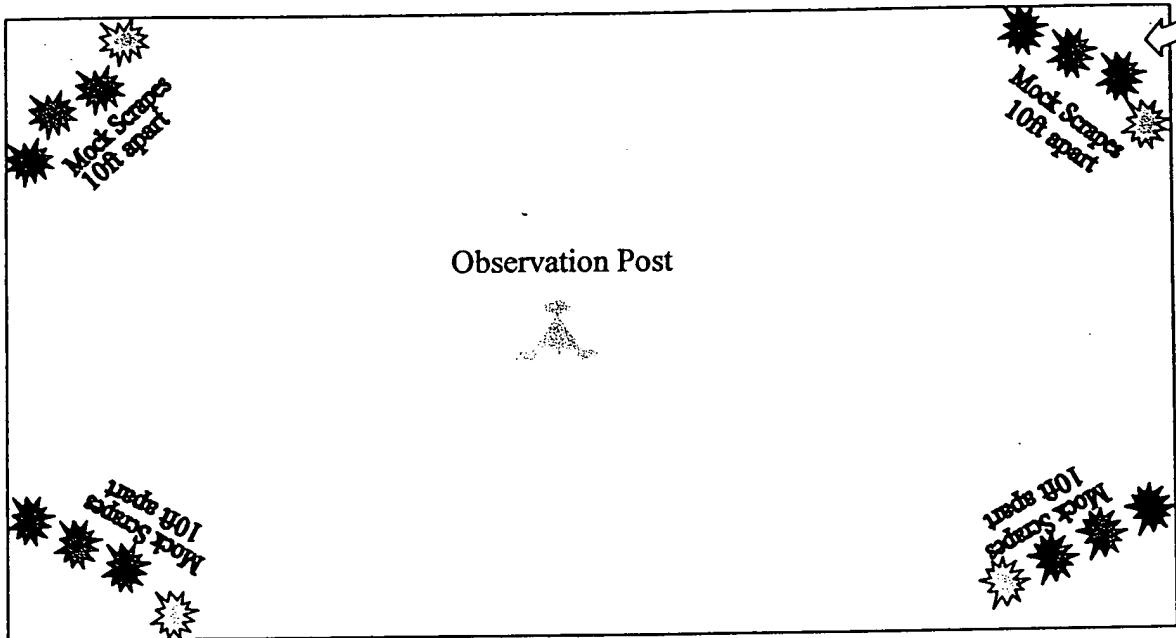
Urban Setting

1999/2000

Sept.-Oct.-Nov.-Dec.

Test Area Aprx. 500 Acres

Scrapes are not all placed down at once but are rotated accordingly.



- ★ - Blue- indicates mock scrape number 1
- ★ - Green- indicates mock scrape number 2
- ★ - Red- indicates mock scrape number 3
- ★ - indicates mock scrape number 4

- A. 1999- 15 tests were conducted in this area.
- B. 2000- 25 tests were conducted in this area.
- C. In all areas observation was done by tree stands or ground blinds depending upon terrain and test site.
- D. When ever possible mock scrapes were placed under tree branches and limbs.

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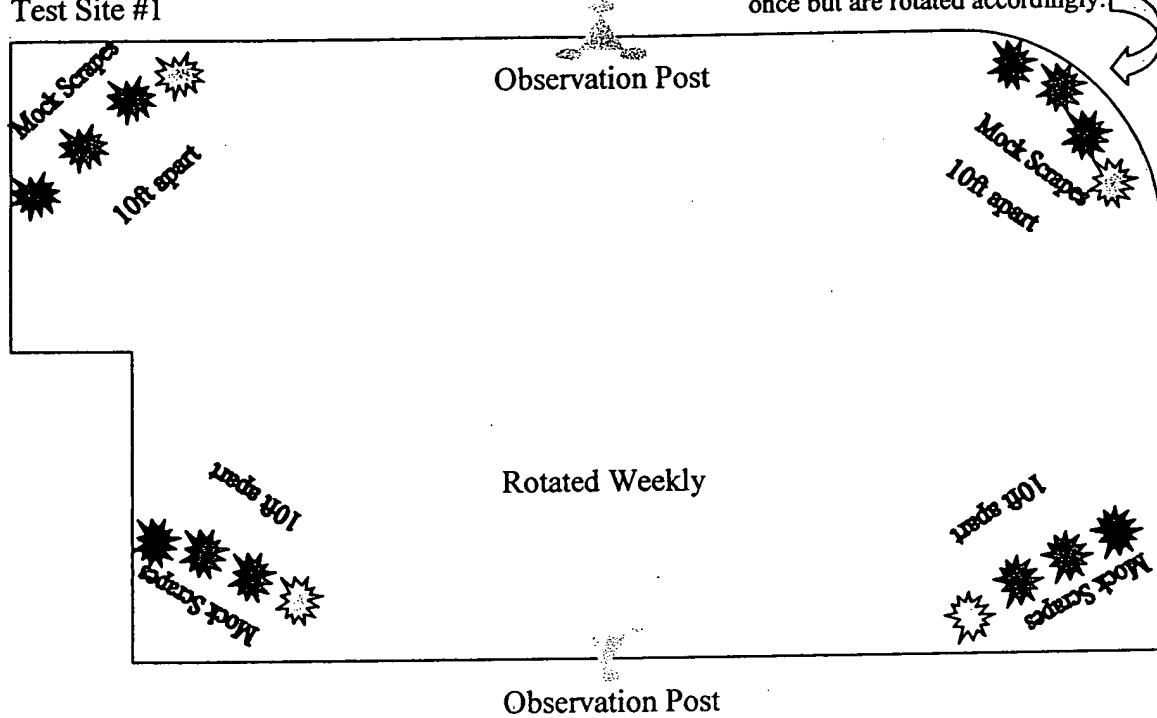
Penned Deer

1999/2000

Sept.-Oct.-Nov.-Dec.

Test Area Aprx. 5 Acres
Test Site #1

Scrapes are not all placed down at once but are rotated accordingly.



■ - blue- indicates mock scrape number 1

■ - green- indicates mock scrape number 2

■ - red- indicates mock scrape number 3

■ - indicates mock scrape number 4

- A. 1999-15 tests conducted in penned in enclosure aprx. 5-6 acres = 15 Bucks tested.
- B. 2000-30 tests conducted in penned in enclosure aprx. 5-6 acres = 30 Bucks used in test.
- C. Mock scrapes placed under/around overhanging branches/limbs whenever possible.

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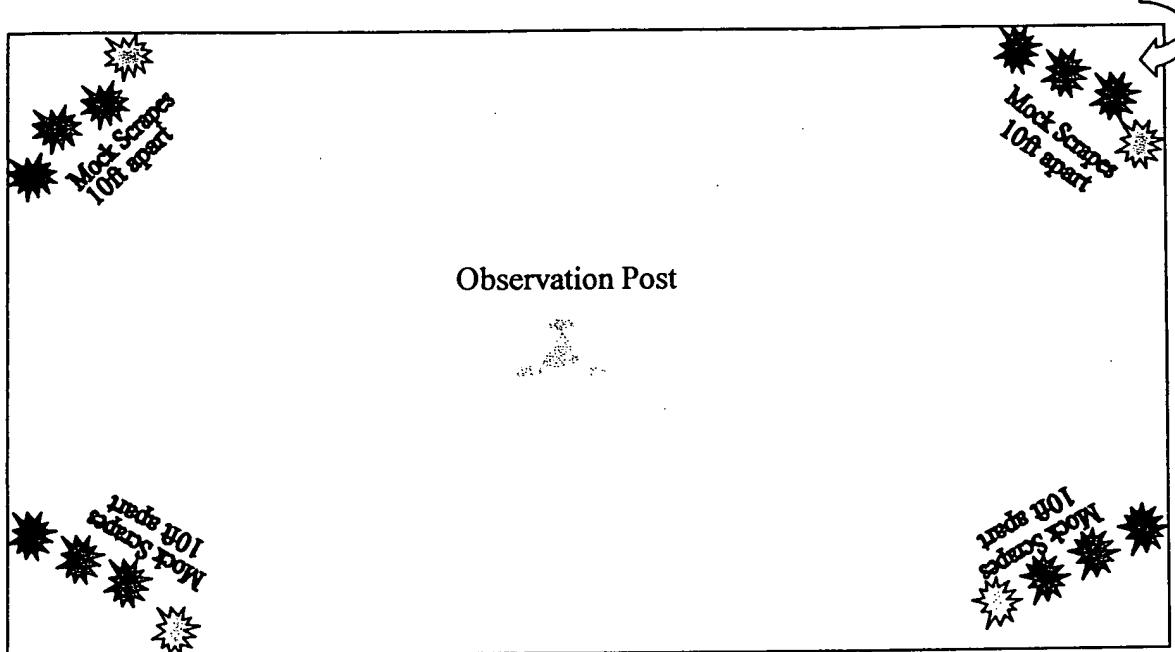
Urban Park Setting

1999/2000

Sept.-Oct.-Nov.-Dec.

Test Area Aprx. 300 Acres

Scrapes are not all placed down at once but are rotated accordingly.



- Blue- indicates mock scrape number 1



- Green- indicates mock scrape number 2



- Red- indicates mock scrape number 3



- indicates mock scrape number 4

- A. Urban Park Setting with mock scrapes placed at least 10ft apart.
- B. 40 Bucks tested in this area well over 300 acres in site.
- C. Great care was given to give each mock scrape enough distance between so that very little if any/no interaction would take place.
- D. 1999- 10 tests were conducted
2000- 30 tests were conducted
- E. When ever possible mock scrapes were placed under tree branches and limbs.



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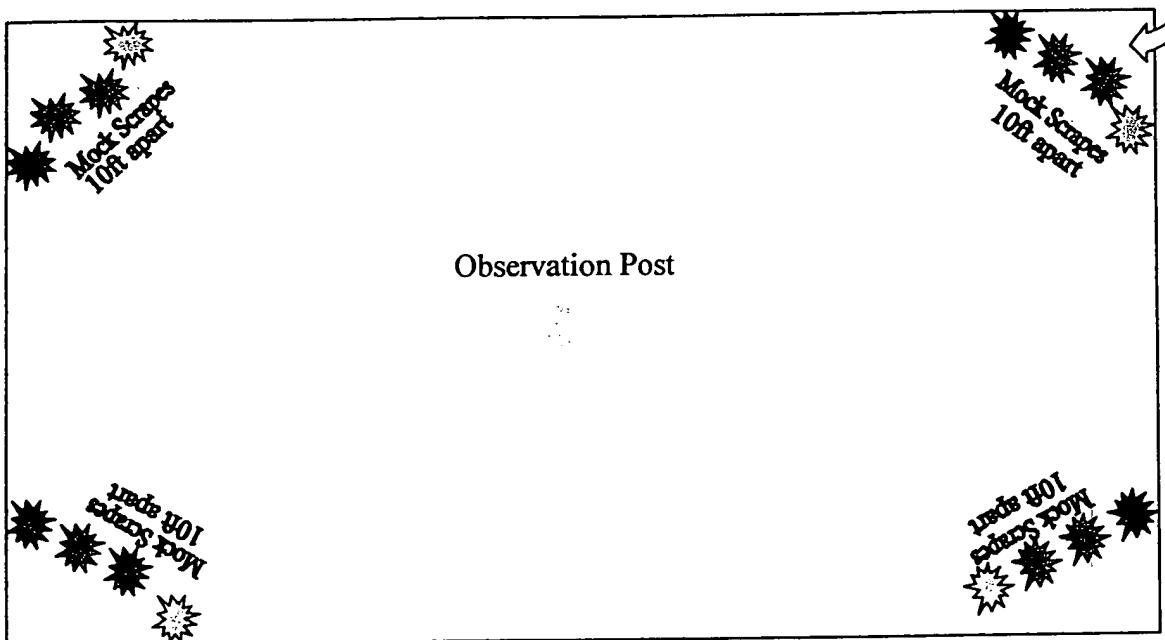
Suburban/ Rural Setting

1999/2000

Sept.-Oct.-Nov.-Dec.

Test Area Aprx. 100-150 Acres

Scrapes are not all placed down at once but are rotated accordingly.



- ★ - Blue- indicates mock scrape number 1
- ★ - Green- indicates mock scrape number 2
- ★ - Red- indicates mock scrape number 3
- ★ - indicates mock scrape number 4

- A. Mock Scrapes placed at least 10ft apart and under/around overhanging branches and limbs when ever possible.
- B. Mock Scrapes were placed in a high usage area for deer.
- C. Once again extreme care was given into regards for no interaction between testing of individual scrapes.
- D. 1999- 10 deer tested in this area.
2000- 15 deer tested in this area.

Follow up testing and observations done by *Dennis Malloy Jr.* Wildlife Biologist

Urban Setting
8 days between Oct. 15-30

1A

16 Hours Here

8 Hours A.M.
8 Hours P.M.

16 hours @ test site.

½ Acre Dimension

Observation Post

Rural Setting

2A

16 Hours Here

8 Hours A.M.
8 Hours P.M.

16 hours @ test site.

½ Acre Dimension

Observation Post

- A. 8 days total observation and 32 hours total.
- B. Mock Scrapes rotated in Clockwise positioning.
- C. Total of 32 deer were observed with 29 showing clear and extremely favorable results with a success rate of 90.6%.